IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1422 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

AND

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KUMBHAR GORDHAN NARANBHAI

Appearance:

Mr. B.D. Desai, APP for appellant State.

MR KG SHETH for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT and
MR.JUSTICE J.R.VORA

Date of decision: 11/01/2000

ORAL JUDGEMENT (Per: H.R. Shelat, J.)

The appellant State of Gujarat,by this appeal, prays for enhancement of the sentence inflicted on respondent by the then learned Additional Sessions Judge, Bhavnagar in Sessions Case No. 105 of 1991 relating to the offences punishable under Section 498-A and 306 of I.P.C.

2. Necessary facts may in brief be stated. Chhaganbhai Gagajibhai Tank got his daughter, Rekhaben aged 30 years married the respondent, before about 3 years. After the marriage whenever his daughter Rekhaben used to visit his place she narrated her miseries and woes. The respondent was maintaining by doing labour but he was not regularly going to his work, with the result respondent used to pick up quarrels whenever Rekhaben tried to remonstrate and bring to reason, and beat her severely. Both for one or another reason could not pull on well with other family members, namely father-in-law, mother-in-law and brother-in-law of the victim Rekhaben. The father and mother of respondent drove them out, consequently respondent and Rekhaben came down to Savarkundla from Chalala and started to reside in the rented house in Parekhwadi. After they settled in Savarkundla, Rekhaben did not have the happy days. She was ill-treated, tortured, tormented and often beaten by the respondent. The respondent was not going to his work regularly as a result day by day problems of maintenance continued to arise eroding their peace and stable life. Rekhaben naturally was demanding the amounts for the maintenance but the respondent being addicted to liquor and gaming used to squander out his earnings,leaving nothing for the maintenance. Gruelling and cruel treatment dejection, row and disheartenment had become a routine. Being tired with such daily ordeals and starvation making the life miserable, and not worth living Rekhaben on 17th May 1991 poured kerosene on herself and committed suicide. Chhaganbhai Gagajibhai, father of Rekhaben was then informed by two daughters of the landlord of the respondent. He went to the scene of incident. Rekhaben was found lying in burnt condition in the courtyard and on being questioned she informed that harassment and ill-treatment was unbearable and as no way was left, she poured the kerosene on herself and made an attempt to commit the suicide. She was then taken to the hospital where during the course of the treatment after about 2 1/2 hours she breathed last. A complaint was then lodged with Dy.S.P. camp at Savarkundla. The Police Officer then investigated into the offence. At the conclusion of the investigation a chargesheet against the respondent relating to the offences punishable under Section 498A and 306 of the Indian Penal Code came to be filed in the Court of the Judicial Magistrate at Savarkundla. As he was not competent to hear and decide the case, he committed the same to the Court of Sessions at Bhavnagar which came to be registered as Sessions Case No. 105 of 1991. The then learned Sessions Judge assigned the matter to the then learned Additional

Sessions Judge holding the court on deputation at Mahuva. He hearing the parties framed the charge at Ex. 6 to which the respondent pleaded not guilty and claimed to be tried. The prosecution then led necessary evidence. Appreciating the evidence before him, the then learned Additional Sessions Judge reached the conclusion that prosecution had beyond reasonable doubt succeeded in establishing the charge levelled against the respondent. He therefore held the respondent guilty and convicted with which he was charged, and sentenced him to 3 years rigorous imprisonment and a fine of Rs. 1000/-, in default rigorous imprisonment for 3 months more of the offence punishable under Section 498-A of I.P.C., and likewise inflicted the sentence separately relating to the offence punishable under Section 306, I.P.C. The prosecution was not satisfied with the sentence inflicted so far as it related to the offence punishable under Section 306, I.P.C. The present appeal is, therefore, filed by the State of Gujarat for enhancement of the sentence qua the offence punishable under Section 306 of the I.P.C.

3. So far as the offence punishable under Section 498A of the Indian Penal Code is concerned, the maximum sentence provided is 3 years, and also the fine. The learned Judge has inflicted 3 years' sentence, the maximum provided. When that is so, the prosecution has no grievance, relating to the sentence inflicted qua the offence u/s. 498-A, I.P. Code, but the prosecution before us urges to inflict more sentence enhancing the same so far as the same relates to the offence punishable under Section 306. It is the contention of Mr. Desai, the learned APP that in such cases the court should frown upon such wrong so that the ill-treatment meted out to the helpless women in the society can be curbed and the attempts of women for committing suicide can successfully be prevented. Section 306 therefore provides the maximum punishment of 10 years imprisonment and fine. When such provision is there, the lower court ought to have inflicted sentence of more years than 3 years already awarded. In short, it is the submission that the lower Court has taken the serious matter lightly.

4. No doubt, Section 498A has come into force for firmly curbing the cruelty or harassment to the women, i.e., weaker spouses and providing adequate protection to them and to combat the menace of dowry death. It is also the object of the provision that the husband or his relative subjecting the woman to cruelty or harassment are tracked and cracked down on. If the charge is proved leading credible evidence, the Court has also to frown

upon and without being compassionate throw the book at the wrong-doer, namely the accused. This is what has been observed by this Court in the case of Indrasing M. Raol Vs. State of Gujarat - XL (3) [1999 (3)] G.L.R. 2536 = 1999 (2) GLH 596, but one cannot miss the principle of law that the sentence must be commensurating with the wrong done. It cannot be disproportionately high or low. While inflicting the sentence therefore the Court has to consider the facts and circumstances on record and in that context try to find out what can be the reasonable sentence required to be inflicted. When the party or the State therefore comes forward with a case of enhancement of the sentence inflicted by the lower court, it is incumbent upon it to show to the court how the sentence inflicted by the lower court is disproportionately low and what can be the adequate sentence commensurating with the wrong done having regards to the facts and circumstances on record. Simply because a particular wrong has been done which has been condemned or censured by the society cannot be the ground to inflict higher or severe punishment than what in the context of the materials on record would be just & adequate.

5. No doubt, in the case on hand, the act of the respondent is barbaric & gruesome and deserves no mercy, but when we perused the record we find that there is no justifiable reason to enhance the sentence qua the offence punishable under Section 306, I.P.C., than what has been inflicted by the lower Court. It appears that the incident happened within a period of 3 years of the marriage. Initially, the respondent and victim were residing jointly with other family members at Chalala and for whatever may be the reason the respondent could not pull on well with his nearer and dearer in the family. It may be that he might not be going to his work regularly and might be squandering out his income as and when he used to earn exerting himself in the market. He was as made clear by the father of the victim in the evidence that respondent was involved in one murder case and was also doing other criminal wrongs, as a result the police was also harassing him. The family members were also not willing to part with the ornaments Rekhaben was owning as her streedhan. Because of such daily affliction & distress, the elders in the family asked the respondent and victim to leave the place and settle elsewhere peacefully. Thereafter they came down to Savarkundla where the father of the victim was residing. They hired the house in Parekhwadi and started to reside there. Their married life was not peaceful and happy because the victim has in her dying declarations Exhibits

17 & 41 made it clear that her husband was paying nothing for the maintenance and she was fed-up with daily abovestated ordeals which she had to undergo for the maintenance. Whenever she used to reprimand the respondent reacted tigerishly. She was beaten brutally and she was tortured and terrorized. It was because the respondent was not regularly going to his work and earn for the maintenance. At times he did not get the work. She also crossed her limits while bringing the respondent to reason as a result the respondent losing temper used to react badly. In the dying declaration she has also found fault with the father-in-law, mother-in-law and brother-in-law for the unfortunate incident though they were not residing with her for the last over three years. It seems she might be very sensitive and fastidious women so as to get her ornaments back. Her failure to get the same back also made her to cultivate the idea to end the life. On the illfated day she being sensitive, poured kerosene on her person and committed suicide, as the respondent as usual asked her to leave the house & him forever. Such facts on record shows that respondent alone was not responsible for what had happened and what was happening till the victim committed suicide. The victim often used to remember the past and recollecting the days she had passed with her father-in-law and mother-in-law, and also often ruminating her failure to get the ornaments back, she was it seems raising the quarrels and disturbing the peace in the family, the reaction of her discontent and fear of future mendacity. What can be deduced is that partly she being over-sensitive & touchy is responsible for the unfortunate incident. In view of such facts, if the court has to inflict the sentence when the charge is proved, certainly the same cannot be more than what has been inflicted by the learned Judge, because in short the respondent cannot solely be made responsible. We therefore find no justifiable reason to inflict more sentence than what has been inflicted by the learned Judge below. In the result, considering the above facts and circumstances, the sentence inflicted is quite adequate. The same is required to be maintained.

6. For the aforesaid reasons, this appeal merits dismissal. It is hence accordingly dismissed.

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(rmr).